HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.3744 OF 2007

Between:

Kaitha Narasimha

…Petitioner

AND

The State Government of A.P.,
Rep., by its Principal Secretary,
Revenue Department, A.P. Secretariat,
Hyderabad and others

...Respondents

: O R D E R :

Counsel for the petitioner : Sri Vijay B. Paropakari

Counsel for the respondents : Government Pleader for Revenue

March 13, 2007

Per G.S. Singhvi, C.J.

In this petition, the petitioner has prayed for striking down sub-rule (k) of Rule 26 of the Andhra Pradesh Rules under the Registration Act, 1908 (for short, 'the Rules') and for issue of a mandamus to Joint Sub-Registrar, District Registrar's Office, Ranga Reddy District (respondent No.3) to entertain, receive and register four deeds dated 8.1.2007 for cancellation of sale deeds registered on 17.3.1997 and 21.3.1997 in respect of the land comprised in Survey No.830

admeasuring Ac.2.03½ guntas, Ac.1.10 guntas, Ac.1.10 guntas and Ac.4.05 guntas respectively situated in Medchal Village and Mandal, Ranga Reddy District.

The petitioner's grandfather is said to be a recorded protected tenant of land measuring Ac.12.38 guntas – Survey No.830 and Ac.12.12 guntas – Survey No.852 situated in Village and Mandal Medchal, Ranga Reddy District. The land owners are also said to have surrendered the said land in the proceedings under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, 'the 1973 Act'). When proceedings under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 were initiated for grant of certificate to the petitioner's grandfather, the landholders resisted the same. The issue was ultimately decided by the High Court on 15.2.2001 and it was held that the declaration made by the landholders would operate as res judicata. In the meanwhile, the land owners and their General Power of Attorney Holder are said to have executed four sale-deeds in respect of the land comprised in Survey No.830 and got the same registered as document Nos.3384/2006 dated 17.3.1997, 7934/1999, dated 17.13.1997, 7935/1999 dated 17.3.1997 and 7936/1999 dated 21.3.1997. The petitioner and his family members presented four deeds dated 8.1.2007 before respondent No.3 for cancellation of three sale deeds dated 17.3.1997 and one sale deed dated 21.3.1997. Respondent No.3 is said to have refused to entertain the cancellation deeds and insisted on the presence of the parties, who had executed the sale deeds.

The petitioner has questioned sub-rule (k) of Rule 26 of the Rules by contending that the same is ultra vires the provisions of the Registration Act, 1908 (for short, 'the 1908 Act') is contrary to the judgment of the Full Bench of this Court in **Yanala Malleshwari v. Ananthula Sayamma**[1]. He has pleaded that the requirement of the presence of executants incorporated in Rule 26 (k) is intended to

overcome the judgment of the Full Bench in **Yanala Malleshwari v. Ananthula Sayamma** (supra) and, therefore, the rule is liable to be quashed. The petitioner has also referred to Rules 15, 60, and 117 to 119 of the Rules and pleaded that the new procedure evolved by the rule making authority for cancellation of the registered document is totally unwarranted. Another plea taken by the petitioner is that in exercise of the power vested in it under Section 69 of the 1908 Act, the State Government cannot frame rules for cancellation of the registered document because there is no substantive provision in the Act for cancellation of registered documents.

We have heard learned counsel for the petitioner and the learned Government Pleader. Rule 26 (k) of the Rules, which was added by amendment notification dated 29.11.2006, reads as under:

"Rule 26 (k):

i) The registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyance on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law.

ii) Save in the manner provided for above, no cancellation deed of a previously registered deed of conveyance on sale before him shall be accepted for presentation for registration."

In our opinion, the above reproduced rule merely incorporates one of the facets of the rules of natural justice in the procedure laid down for registration of cancellation deed of previously registered

document. The rule is intended to ensure that a duly registered sale-deed is not cancelled without the executant and claimant getting opportunity to contest the registration of cancellation deed. There is nothing in the rule, which can be treated inconsistent with the scheme of the Act or Rules 15, 16 and 117 to 119. It does not have the effect of taking away the right of the executant of cancellation deed. Rather, it seeks to put the executant and claimants of the original document to notice that somebody seeking cancellation thereof. Therefore, the impugned rule cannot be treated ultra vires the provisions of the 1908 Act and/or other rules.

In **Yanala Malleshwari v. Ananthula Sayamma**'s case (supra), the Full Bench considered the question whether the cancellation deed should be registered without notice to the executant. The majority of the Full Bench examined various facets of the issue and held:

"75. It is therefore axiomatic that in India, the judicial, quasi judicial and administrative authorities have inherent powers to recall their orders or proceedings at a latter point of time if it is shown that such order was obtained by playing fraud and misrepresentation. The question of applicability of law of limitation to exercise such inherent power by the administrative authorities does not arise because fraud unravels every thing rendering a fraudulent order void and non-existent. To our mind, this principle in a different manner is also adumbrated in Section 21 of General clauses Act, 1897 (Central Act No. X of 1897). Under the said provision, an authority who has power to issue, inter alia orders has also power to rescind such order. Further, the rule 117 of Registration Rules permits the registration of cancellation deed in the same class of register book as that in which original document which it cancels has been registered. It is clearly not possible to accept the submission that registering officer has no power to accept and register a cancellation deed cancelling the earlier sale deed. Such an interpretation would not sub-serve public interest and if the registering officer is not given such power, it would further harm public interest and public policy. Nobody can deny that in a civilized society regulated by rule of law, the person with valid title must have the liberty to enjoy his property and such liberty cannot be deprived of without proper procedure under law.

76. In the considered opinion of this Court if a person sells away the property belonging to other, it would certainly be fraud on the statute. It would be adding insult to injury, if such person is asked to go to civil Court and get the subsequent sale deed cancelled or seek a declaration. Be it also noted

that under common law, as discussed supra, the title of a person remains intact even if a stranger conveys that title to another stranger, which is ineffective. In the context of describing 'overriding interest' (interests, rights and powers not entered in the register), in Halsbury's Laws of England (Fourth Edition by Lord Mackay, volume 26 (reissue), the following is elucidated:

> **Para 786**. **Entry of existence of overriding interests**. Where the existence of any overriding interest is proved to his satisfaction or admitted, the registrar may, subject to prescribed exceptions, enter notice of the interest or of a claim to it on the register. This is a general provision which authorizes entry of notice of, among other things, the burden of an easement, right or privilege (being an overriding interest) acquired in equity by prescription if it be of such an estate and nature as is capable of taking effect at law.
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> Any person desiring an entry to be made must make a written application giving particulars of the entry required. If the applicant is the proprietor of the land, or the liability, right or interest has been created by the proprietor, and if in either case there is no caution, restriction or inhibition on the register, an entry of the existence of the liability, right or interest may be made accordingly. In other cases evidence satisfactory to the registrar must be produced of the existence of the liability, right or interest. The proprietor of the land, if not the applicant, must have notice of the application; and the matter must be proceeded with as the registrar directs any entry of the existence of the liability right or interest, if made, must be against the title in the charges register; and such entry must be made so far as practicable and convenient by reference to the instrument creating the right or by setting out an extract from it. No claim to an easement, right or privilege not created by an instrument may be noted against the title to the servient land if the proprietor of that land (after 14 days' notice or such longer period as the registrar deems advisable) shows sufficient cause to the contrary.

77. The person, who has ex facie right whether such right is registered or not can always approach the registering authority, with a request to cancel a sale deed, which was registered earlier by such registering authority by showing that subsequent registration was obtained by fraud by a person who is not entitled to transfer the property or that such transfer was registered by playing fraud on the owner or on the stranger. In the present statutory dispensation, namely Transfer of Property Act, Contract Act, Specific relief Act and Registration Act, the Court does not see any prohibition operating on the exercise of inherent power by the registering authority to cancel the sale deed earlier registered, which is likely to cause

prejudice to the true owner as well as to the entire public at large."

In our opinion, the impugned rule does not in any manner violate the ratio of the majority judgment of the Full Bench. Rather, as mentioned above, it is a statutory embodiment of one of the rules of natural justice and is intended to curtail unnecessary litigation emanating from the ex parte registration of cancellation deeds.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.4772 of 2007 filed by the petitioner for early hearing of the writ petition is disposed of as infructuous.

G.S. SINGHVI, CJ

March 13, 2007

C.V. NAGARJUNA REDDY, J

ARS/svs

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[1] 2006 (6) ALD 623